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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 21, 1993

Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: MM Docket 92-266
Report and Order and Further Notice of Proposed Rulemaking
In the Matter of Implementation of Sections of the Cable Television
Consumer Protection and Competition Act of 1992: Rate Regulation

Dear Sir:

Attached is a letter concerning the repercussions on the financial markets of the regulations adopted and proposed under the above referenced proceedings. The letter has been jointly endorsed by a number of the large commercial banks which follow and are active lenders to the cable television industry. We appreciate your consideration of the attached letter. If there are any questions please contact the undersigned.

Sincerely,

Douglas B. Smith
The Bank of New York
212-635-8471

Thomas E. Carter
NationsBank
214-508-0924

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 21, 1993

The Honorable James H. Quello
Chairman
Federal Communications Commission
Washington, DC 20554

Re: MM Docket No. 92-266

Report and Order and Further Notice of Proposed Rulemaking in the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (the "Report & Order").

Dear Chairman Quello:

As you may be aware, the undersigned lending institutions are major lenders to the Cable Television industry with over $17.1 billion in commitments. Accordingly, we feel that it is important to share our views on the FCC's Report and Order in the above-referenced proceeding. Our comments are directed toward the current state of the financial marketplace for Cable Television, the expected consequences of the proposed rules on existing and future financings, and the corresponding impact on the industry's ability to invest in the plant and equipment necessary to provide advanced multimedia services to its customers.

When the Cable Act was passed in October 1992, the financial community initially reacted positively to what appeared to be a resolution to a significant amount of uncertainty which had persisted since cable re-regulation was proposed several years ago. However, the combination of the staged roll-out of the rules, their complexity, and several inconsistencies has created a great deal of concern among operators and lenders alike, and confusion for consumers.

Although cable system operators have attempted to estimate the impact of the Report and Order on their Cash Flow (defined as earnings before interest, taxes, depreciation and amortization), significant uncertainty remains as to the ultimate reduction in

Cash Flow and the timing of such reduction. These uncertainties result from: (i) the complexity of the rules and the existence of inconsistencies therein; (ii) the staged roll-out of the rules; (iii) the lack of defined cost-of-service showing standards and the intended adoption of such standards subsequent to the date when a cable operator must opt for either application of the FCC benchmark methodology or a cost-of-service showing: (iv) the outcome of retransmission consent negotiations and the inability of cable system operators to pass along any associated payments prior to October 6, 1994; (v) the FCC's continued consideration of excluding systems with less than 30% penetration from the definition of competitive systems, which may result in a further 17% reduction in the benchmark rates and, accordingly, basic program rates; (vi) the FCC's right to examine rates which, after the initial roll-back, are still above the benchmark, and to order further reductions thereof; and (vii) potential delays in implementing the Report and Order due to the logistics of conducting cost-of-service showings and potential legal challenges. This uncertainty is further exacerbated by: (i) a benchmark rate structure which appears to disincent the operators from upgrading their cable plant (the average permitted rate-per- channel declines as channel capacity increases) and, therefore, discourages the introduction of new services which may generate revenues to offset lower basic revenues; (ii) a benchmark rate structure that encourages the substitution of less expensive programming for existing programming (because the benchmarks do not directly factor in the cost of programming), which may reduce the overall attractiveness to the consumer of basic cable programming; and (iii) the must carry/retransmission consent rules which may result in the exclusion of certain existing broadcast or cable programs and further impact the consumer's perception of the value of basic cable programming.

At the Commission's open meeting on April 1, 1993 to consider the Report and Order, Commissioner Barrett asked the FCC staff if these regulations would have any effect on the industry's ability to access new financing. The staff suggested it would not. We respectfully disagree. Since Cash Flow is the primary determinant of a cable system's debt capacity, until all consequences of the Report and Order are determined (including the results of cost-of-service appeals), new bank financing will be inaccessible to most cable operators. It is estimated that it may take a number of quarters for the industry to fully assess the impact of the Report and Order and provide the financial community with meaningful forecasts. It is unlikely that we will lend new funds to the industry until the impact of the Report and Order is quantified and the operators are able to provide supportable forecasts.

The Cash Flow reductions resulting from the Report and Order threaten to place many cable system operators in default of bank and insurance company loan agreements since most of these agreements contain financial covenants based on Cash Flow. These financial covenants were based on Cash Flow forecasts prepared prior to the publication of the Report and Order. These forecasts showed reasonable growth in revenues and Cash Flow from a combination of modest rate increases, subscriber growth and system expansion. This forecasted operating performance may in many cases no longer be attainable given the Cash Flow reductions attendant to the FCC benchmark methodology and the disincentives therein to system expansion. Many operators will need to seek amendments of their financial covenants. Others may have to divert funds from capital expenditures, raise additional equity, or amend their debt amortization schedules to meet existing debt repayment obligations. While the strongest cable operators will have financing options, the smaller "all cable" operators will find all forms of capital elusive.

As a result of these potential covenant defaults, banks and insurance companies, traditionally the primary source of debt capital to the Cable Television industry, may likely face heightwith competitive markets, both providers are competing for market share and are not operating at sustainable rate levels. The cable operator is able to offset the lower rates in the competitive system with Cash Flow from other systems; on the other hand, the second provider is generally equity financed and is initially charged with gaining market share rather than generating sufficient Cash Flow to justify its capital investment. As a result, the rate levels in most of the competitive situations are not likely to be sustainable over the long term. This is demonstrated by the fact that in several markets where competition had existed, one of the two providers either became insolvent or voluntarily withdrew from the market.

We urge that the potential consequences outlined above be given serious consideration when evaluating the proposed rules. Specifically, we ask that you promptly reconsider, refine and clarify the basis of the rate benchmarks and the means by which operators can preserve their financial viability through cost-of-service showings. Failure to take this prompt action, we strongly believe, will have a negative effect on the banking industry's ability to finance the continued growth of the cable television industry. This in turn will be injurious to the consumer's quality of service and programming content; the competitive environment for development of highly sophisticated, broadband networks which will provide for multi-faceted interactive service including voice, data and video components; overall industry employment; and the smaller entrepreneurial operator's ability to survive.

We look forward to pursuing these issues in greater detail by participating in the upcoming comment period related to the cost-of-service rules showing.

Sincerely,

Bank of America
The Bank of Hawaii
The Bank of New York
The Bank of Nova Scotia
Canadian Imperial Bank of Commerce
Citibank
CoreStates Bank
The First National Bank of Boston
The First National Bank of Chicago
First Union National Bank
Fleet National Bank
Mellon Bank
Morgan Guaranty Trust of New York
NationsBank
PNC Bank
Royal Bank of Canada
Societe Generale
Toronto Dominion

cc: Commissioner Andrew Barrett
Commissioner Ervin Duggan